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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,210	11/20/2003	Parijat Dube	YOR920030423US1	9022
7590 Ryan, Mason & Lewis, LLP 90 Forest Avenue Locust Valley, NY 11560				
09/12/2008				
EXAMINER				
PARKER, BRANDI P				
ART UNIT		PAPER NUMBER		
3623				
MAIL DATE		DELIVERY MODE		
09/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/718,210

Applicant(s)

DUBE ET AL.

Examiner

BRANDI P. PARKER

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Acknowledgements

1. The following is a Final Office action in response to communications filed on June 3, 2008. Claims 1-19 have been examined and claims 1 and 17-19 are amended and claim 11 is cancelled.

Response to Applicant's Remarks

2. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1, 5-10, 12, 15-19 are rejected under 35 U.S.C. 102(a) as being anticipated by Dietrich et al (US 6526392).

5. With respect to claims 1 and 17-19, Dietrich teaches

a. obtaining data associated with at least one potential demand for use of the one or more resources (column/line 4/17-20, regarding customer forecasted demand);

b. generating a management model in accordance with at least a portion of the obtained data, wherein the management model is operative to determine an allocation of the one or more resources based on combinations of price levels and service levels that may be offered to one or more users of the one or more resources so as to attempt to satisfy at least one management goal

i. wherein the combinations are determined by computing a set of prices and a set of service levels to offer to the one or more users at each one of the prices in the set of prices, and wherein the set of prices and set of service levels are derived from: (i) levels associated with the one or more resources; (ii) historical demand data; and (iii) predicted demand data (column/line 4/27-40, regarding analyzing forecasted or historical demand for a profile of anticipated service activity);

c. evaluating the satisfaction of the management goal for each combination associated with the management model (column/line 2/57-60, regarding the evaluation of the resource requirements using the service model); and

d. determining an optimal configuration of the one or more resources, in accordance with the management model; that maximizes the management goal, wherein the optimal configuration is determined by solving the management model using one of a linear programming solver and a nonlinear programming solver (column/line 8/8-21, regarding using linear programming for the optimal allocation method).

The computing resource component is anticipated by Dietrich because a service activity can include the transmission of information over a network (column/line 3/6-10)

6. Regarding claim 2, Dietrich teaches the method of claim 1, wherein the management model generating step further comprises determining the allocation also based on at least one of historical data and predicted data associated with a demand pattern (column/line 4/16-25, regarding forecasted demand)).

7. As to claim 3, Dietrich teaches the method of claim 1, wherein the management model generating step further comprises determining the allocation also based on at least one of historical data and predicted data associated with a resource usage level (column/line 7/55-61, regarding remaining resources or residual service network).

8. With respect to claim 5, Dietrich teaches the method of claim 1, wherein the management model generating step further comprises aggregating at least one of historical data and predicted data associated with a resource usage level (column/line 4/34-40, regarding customer profile including total and historical demand).

9. Regarding claims 6, 7 and 8, Dietrich teaches the method of claim 1, wherein the management model generating step further comprises setting price levels and service levels to be offered to users based on at least one of current data and predicted data and wherein the at least one of current data and predicted data comprises at least one of demand data and resource data (column/line 2/45-3/3, regarding the yield managed service contract pricing system for setting prices current activity and usage by customers).

10. As to claim 9, Dietrich teaches the method of claim 6, wherein the setting step is also based on a maximum number of price-service-level combinations (column/line 4/66-5/3, regarding determining the pricing range including what the maximum should be).

11. With respect to claim 10, Dietrich teaches the method of claim 9, wherein the management model generating step further comprises evaluating a revenue value for each price-service-level combination (column/line 1/48-52, regarding net profitability).

12. Regarding claim 12, Dietrich teaches the method of claim 1, wherein the management goal is at least one of: (i) achieving a revenue goal; (ii) increasing a market share; (iii) responding to a competitor; and (iv) smoothing a demand pattern (column/line 9/63-10/2 regarding generating a pricing range based on competitors for a competitive bid).

13. As to claims 15 and 16, Dietrich teaches the method of claim 1, wherein the management model comprises a yield management model or revenue management model (column/line 1/48-52, regarding the yield managed contract pricing system that can manage overall net profitability or revenue).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 4 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietrich et al (US 6,526,392).

16. With respect to claim 4, Dietrich teaches the method of claim 1. Dietrich does not directly teach representing potential demand in the form of a demand curve or discrete choice model. However, representing the at least one potential demand as one of a demand curve and a discrete choice model consist of nonfunctional descriptive material that does not further limit the method or system as provided by Dietrich. Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability [T]he critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate. *In re Gulack*, 217 USPQ 401 (Fed. Cir. 1983), *In re Ngai*, 70 USPQ2d (Fed. Cir. 2004), *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II. Therefore, it would have been obvious to one with ordinary skill in the art to representing potential demand in the form of a demand curve or discrete choice model.

17. As to claim 13 and 14, Dietrich teaches the method of claim 1. Dietrich does not directly teach using the method associated with a computing center or electronic utility. However, such disclosure consist of intended use of the method or system. It has been held that the manner or method in which machine is to be utilized is not germane to issue of patentability of machine itself. *In re Casey*, 152 USPQ 235 (CCPA 1967). Furthermore, a recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art- if the prior art has the capability to so perform. MPEP 2114 and *Ex parte Masham*, 2

USPQ2d 1647 (1987). Therefore, it would have been obvious to one with ordinary skill in the art to utilize the method and system in Dietrich with computing centers or electronic utilities.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

19. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI P. PARKER whose telephone number is (571) 272-9796. The examiner can normally be reached on Mon-Thurs. 8-5pm.

21. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRANDI P PARKER/
Examiner, Art Unit 3623

/Beth V. Boswell/
Supervisory Patent Examiner, Art Unit 3623